IN THE

# Supreme Court of the United States

October Term, 1969

No. 661

HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
*Petitioners,*

*versus*

ZACHARIAS RHODITIS,
*Respondent.*

## BRIEF OF RESPONDENT

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## BRIEF OF RESPONDENT

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## QUESTION PRESENTED

Can the owner of a fleet of twenty-two ships, who has been a U.S. domiciliary for twenty-five years, during which he personally has managed and operated, from within the U.S., with these ships, a regularly scheduled liner service handling trade, at U.S. liner conference freight rates, between the U.S. and fifteen nations not including Greece, avoid the application of U.S. law to tort suits by his seamen-employees against his Greek and Panamanian registered corporations which are commercially domiciled in the U.S., by buying Greek flags to fly on his ships and manning them with Greek crews hired under contracts providing an exclusive Greek remedy, for the sole reason that he happens to have been born in Greece?

## STATEMENT OF THE CASE

99% of the stock of Petitioners Hellenic and Universal has always been owned by Mr. Pericles G. Callimanopoulos (A. 68, 83 & 65), who was born in Patras, Greece, in 1892 (A. 119). In 1935 Mr. Callimanopoulos incorporated Petitioner Hellenic and registered it in Greece, at which time it owned one ship (A. 123). By 1939, Petitioner Hellenic owned eight ships, all which the Greek Government confiscated upon the outbreak of World War II, and all but the oldest one of these ships were sunk by enemy action during that War (A. 123-124).

In 1945 Mr. Callimanopoulos moved to the U.S. (A. 148) in order to start again, this time in the shipping business of the U.S. (A. 127). He did not remain in Greece and hire a corporation of the U.S. as agent to manage and operate all contacts of his shipping transactions with the U.S. incidential upon handling the trade of Greece with the U.S., rather he came here to personally handle a trade between the U.S. and other countries not including Greece (See references to Single Appendix, *infra*). World cargoes in 1945 were not any more in the U.S., as compared to being in Greece, than they had been between 1935 and 1938 when Mr. Callimanopoulos expanded from one to eight ships as *bona fide* Greek shipowner operating from Greece; nor in 1945 was the U.S., because of its prodigious wealth, in any more of an advantageous trade position in international commerce by comparison to Greece than it had been, also because of its prodigious wealth, from 1935 to 1938. The U.S. has always been

rich; Mr. Callimanopoulos came here, like most people who do, because he preferred the advantages of our form of government and law.

In 1948 Mr. Callimanopoulos brought his family here and he and they took up residence in Greenwich, Connecticut; he has never since then moved his home from there to Mexico or Canada or anywhere else; in fact, except for vacations to Greece for a month or so several times a year, he has been living in the U.S. since 1948 (A. 148-151). His *animus manendi* in the U.S. is so clear that the presumption of domicile attaching to his long residence here is insuperable, and indeed no evidence was adduced to rebut this presumption anyway.

As a start for his new U.S. operation, Mr. Callimanopoulos bought five "Liberty" ships from the U.S. Government (A. 127). Even in his pre-World War II days in Greece, he had dreamed of breaking with the custom of Greek shipowners of engaging exclusively in international dry-cargo tramping, by establishing a system of liner services (A. 120), but it was not until after he was already living in the U.S. that he actually did this (A. 159).

Tramp operators do not provide scheduled sailings between predetermined ports but instead negotiate each separate voyage with the owner of a bulk of homogeneous cargo, under a charter of the vessel to the cargo owner arranged by a shipbroker, usually in London or New York; obviously, contacts of a tramp operator with ports other than those of his own nation

are only incidentally necessary to his operation and do not necessarily establish a connection of any significance with such other ports.

Liner operators, on the other hand, maintain regular sailing schedules at predictable intervals from the same ports, thus, in addition to cargo, they may also carry passengers and mail; they will ship anything anyone wants to send, consequently their cargoes are usually composed of a wide variety of general merchandise of differing values, nature and quantity, but their ships are guaranteed to sail on schedule whether full or not; experience teaches the liner operator to adjust the design and performance of his ships toward fulfilling the requirements of the shippers habitually using his services, as Callimanopoulos did (A. 123-124). By its nature, liner operation requires an extensive, permanent organization of staff and offices at each end of the liner route; thus, famous liner services like the Cunard Line, Holland-America Line, French Line and Italian Line are well known for their large offices and extensive business involvement in the U.S. without there existing, however, any doubt that they are *bona fide* foreign corporations whose stock is owned by a multitude of the nationals and domiciliaries of their own countries, and whose executive headquarters are in their own countries, and that these corporations are often extensively regulated or even partly owned by their own governments (e.g. the French Line, Compagnie Generale Transatlantique, and the Italian Line, Italia Line), seeing that they render the indispensable service to their own nations of carrying their trade with, *inter alia*, the U.S., a service in which the govern-

ments of their countries have a legitimate interest. In such cases, their contacts with the U.S. are undoubtedly incidental to a *bona fide* foreign business concern and, again, do not establish a connection of any significance with U.S. ports.

Furthermore, liner companies not only provide regular shipping of every kind of cargo, but they are also prepared to do so at previously advertised freight rates fixed by the liner conference system, a system formed by shipping companies of different ownership and nationality, that operate between the same range of ports, for the purpose of regulating uneconomic competition, by fixing the freight rates they will charge for each type of goods carried and by allocating a specified number of sailings to each conference member company. The fact that the liner conference system in the U.S. is subject to regulation and approval by the National Shipping Authority in accordance with the provisions of the Shipping Act of 1916, 46 U.S.C.A. §§ 801-842, while it does not compel any conclusion that such *bona fide* foreign companies as Cunard, etc., which are members of U. S. liner conferences should be viewed as U. S. business enterprises, nevertheless does mean that all members of U.S. liner conferences, whether domestic or *bona fide* foreign, are charging freight rates which are standard in the U.S. on cargoes regularly originating and terminating in U.S. ports, and not just operating casual ships that occasionally pick up cargoes here at cut rates.

It was a system of liner services rather than a tramp operation that Mr. Callimanopoulos originated in the

U.S., after he came to the U.S. (A. 159), and although at first he actually did run a liner service between the U.S. and Greece (A. 127), he had already, long before this cause of action arose, abandoned this U.S.-Greece liner service and had been, was and is operating, with twenty-two ships, five liner services between the U.S. and fifteen nations not including Greece (A. 71-72, 90-95, 136, 141, & 155-157); his corporations are members of U.S. liner conferences, charging U.S. liner conference freight rates (See *Hellenic Lines, Ltd. v. Federal Maritime Board* (U.S. App. D.C. Cir. 1961) 295 F.2d 138.); and his U.S. liner service vessels have been occasionally hired by the U.S. Government to carry foreign aid cargoes of the U.S. to Egypt (A. 70). There was testimony in the District Court by Petitioners' witness Mr. Hennessy that Callimanopoulos' U.S. Gulf-India, Pakistan liner service vessels "may call at Piraeus when cargo warrants" (A. 87), but it is clear that such occasional tramp sorties off this one liner route, if there really are any (for not only is such "tramping off" antithetical to liner operation, but Callimanopoulos himself testified emphatically that he runs no tramp services (A. 163) ), are purely incidental to this one U.S. Gulf-India, Pakistan Liner service rather than Callimanopoulos' presence in the U.S. being genuinely incidental to some unpredictably sporadic trade between the U.S. and Greece. His only remaining regular cargo contact with Greece is on one liner service running between Great Britain, Northern Europe, Greece and Turkey only (A. 71-72, 136 & 161), which is operated by the Fenton Steamship Co., a British company which, according to Mr. Callimanopoulos himself, is not even a subsidiary of Petitioner Hellenic and in which he is only a partner (A. 167-8); in addition, he is involved in two other

liner services which touch neither the U.S. nor Greece; and he owns a total of fourteen ships in use on these last three liner services (A. 71-72, 136 & 161).

Clearly there is no factual similarity between the U.S. liner operations of Mr. Callimanopoulos and those of such liner operators as the Cunard, Holland-America, French and Italian Lines, nor between his reasons for having a presence in the U.S. and theirs; all his stock "lives" and is controlled in the U.S., and because he hardly even handles trade between the U.S. and the nation from which he came, his presence here is not only not an incident to furtherance of commercial relations between Greece and the U.S., but represents for him a conscious and deliberate self-immersion in the commercial life of the U.S. for its own sake.

In 1956, in the fashion typical of American shipowners and with the advice, help and draftsmanship of New York lawyers, he organized and incorporated two Panamanian corporations, Transpacific Cargo Carriers, Inc. and Petitioner Universal Cargo Carriers, Inc., neither of which has ever had any offices or employees in Panama, and registered to them the ownership of nineteen of his twenty-two U.S. liner service vessels, including the s/s HELLENIC HERO (to Petitioner Universal) (A. 65, 90, 164-166 & 168). Surely, under this arrangement, he would never have to worry about the Greek Government's confiscating these ships which were owned by Panamanian legal persons; his alienation from the arbitrary government of his homeland was complete. And just to make sure that the other obvious advantage of this arrangement (the three-

way splitting up of corporate profits and the funneling of most of them into two Panamanian corporations (A. 85), for tax purposes) would be preserved by an appearance of reality, Mr. Callimanopoulos and his lawyers had Petitioner Hellenic and Petitioner Universal enter into an agreement in 1960 by which Hellenic was to act as Universal's agent for cargoes in Greece at 1¼% commission (A. 36-40). The sham involved here was of course that Universal's ships never handle any more than occasional cargo to or from Greece. The naivete of Callimanopoulos and his advisors in erecting this facade and their optimism in believing no one would see through it becomes apparent when it is noted that Petitioner Universal's first answer to Respondent's Interrogatory in the District Court herein, as to who owns Universal's stock, was that it is all bearer stock and that consequently the names of the holders of it were unknown (A. 32 & 34); then, in answer to an additional, more probing Interrogatory, the information was elicited that all Universal's stock is owned by Hellenic (A. 45-46 & 47-48), a fact which could not have been unknown to Petitioners when they answered the first Interrogatory. But, in any event, in the abundance of his circumspection to avoid being subjected to the jurisdiction of Greece, in the event of Hellenic's becoming broiled in a dispute with Universal because of some unforeseen recalcitrance of Universal's three dummy officers-directors (A. 34), Callimanopoulos included in this agreement a provision that any dispute between the two corporations must be submitted for resolution to an arbitrator in New York, in accordance with New York Arbitration Law, whose decision would be as final as the judgment of a court, and that

the interpretation of the agreement would be governed by "the laws of the State of New York, United States of America" (A. 39).

Additional evidence of Mr. Callimanopoulos' distaste for any other jurisdiction and law but that of the U.S., when it suits him, is the fact that he preferred to sue the Republic of Tunisia, right across the Mediterranean from Greece in North Africa, in U. S. courts rather than in Tunisia and even went to the extreme of trying to compel a deputy U. S. Marshal to serve the diplomatically immune Tunisian Ambassador to the U.S. with process (See *Hellenic Lines Ltd. v. Moore* (U.S. App. D.C. Cir. 1965) 345 F. 2d 978.), and the fact that his corporations have willingly sought the protection of U.S. law in the reported cases listed at Volume 53, Moore's Federal Practices Digest, Table of cases "A-L", under "Hellenic Lines, Ltd." and Volume 55, Defendant Plaintiff Table "A-L" (for cases in which Hellenic was Appellee).

Mr. Callimanopoulos has continued at all times to buy and fly Greek flags on his vessels, although he also occasionally operates vessels flying other nations' flags when cargo demands exceed the capacity of his own ships (A. 162 & 202), and to staff them exclusively with Greek crews (A. 66-67, 73 & 120), these practices representing the only contact between his U.S. liner services and Greece. Any U.S. based liner operator collecting shipping revenues at U.S. freight rates who can hire seamen at the base rate of wages of $112.00 per month in Greece, as Callimanopoulos does (A. 76), and trust that U.S. courts will consider applicable to their tort claims the law of his Greek flags, and who is thus

arrogating to himself in each phase of his operation the best of all possible commercial worlds, would be foolish, no matter how long he has lived here, to swear allegiance to the flag of the United States of America, give up his Greek flags and Greek crews, hoist the stars and stripes on his ships and start hiring U.S. seamen at American seamen's union wage scales; but any pretense that these Greek flags and crews are indicia of Callimanopoulos' loyalty to Greece is insupportable. It was simply a matter of convenience for him, before the closing of the Suez Canal, that the Greek island of Crete is far from the Greek mainland, out in the middle of the Mediterranean, seeing that his U.S. liners seldom or never carry Greek cargoes, since his ships could and did pick up and discharge its Greek crews at Herakleion, Crete (A. 74, 176 & Brief of Petrs., App. A-2) while on the route between the U.S. and Red Sea, Persian Gulf and Indian ports, without the necessity of deviating from this route to go to Piraeus on the Greek mainland; and there is no doubt that since Suez has been closed, it is still profitable for him to fly these Greek crews to New York where they may undergo the ceremony of signing Greek articles at the Greek Consulate there, which he occasionally did even before the Canal was closed (A. 175-176 & 181-182).

There is no question but that Mr. Callimanopoulos personally runs all five of his U.S. liner services from his offices in the U.S. (A. 83). He was living here as a treaty trader from 1945 to 1951, when he became a permanent resident alien, a status he still maintains (A. 148), which renders him eligible for U.S. citizenship (8 U.S.C.A. §1427), but he has never sought it. Accord-

ing to the U.S. Department of State and the U.S. Mission to the United Nations, he has never enjoyed diplomatic immunity, much less any diplomatic status at all in the U.S. (Appendices A & B to this Brief). His Insurance and Claims Manager at Hellenic, New York lawyer Gerald Hennessy, testified at the trial below in the Southern District of Alabama that Callimanopoulos has been a member of the Greek Delegation to the United Nations since 1963 (A. 69). In addition to the contradiction thereof by our State Department and our Mission to the U.N., it is interesting to note that when questioned closely about the purpose of his residence here at his deposition in 1964 he failed to mention such U.N. Delegate status (A. 148-149). At any rate, while Petitioners do not contend that Callimanopoulos is diplomatically immune, they appear to take the position that his twenty-five year domicile in the U.S. in order to run his U.S. liner services has now been explicable since 1963 in terms of "special purpose" to fulfill his U.N. Delegate status duties. Clearly, any courtesy passport or other token official papers which Mr. Callimanopoulos may have been successful in obtaining from the Greek Consulate at New York in 1963 after having already been engaged in the shipping business here for eighteen years is insufficient to persuade that they are the sole reason for his presence in this country or that, absent such papers, he would now pack up his huge shipping business and move back to Greece.

The office of Hellenic Lines at 39 Broadway in New York City from which Callimanopoulos runs his five U.S. liner services employs approximately one hundred personnel (A. 153); Hellenic has another office in New Orleans to facilitate his U.S. Gulf ports trade which

employs fifteen people (A. 90); its New York headquarters also regularly employs one hundred American stevedores (A. 153-154); and it owns its own docks in Brooklyn (A. 90); whereas Hellenic's office in Piraeus employs only approximately sixty personnel (A. 71). This latter office is styled by Hellenic its "home" office, but styling can not make it so. The letterhead of Hellenic's "home" office stationery in Piraeus is entirely in English as is the correspondence carried on it (Appendix C to this Brief & A. 24-25), although the official language of international correspondence in Greece is French (See Brief of Greek Chamber of Shipping and Union of Greek Shipowners as Amici Curiae, Exhibit B, at p. 3a, upper left corner). Furthermore, the Piraeus office reports everything that happens there to the New York office, rather than vice-versa, even to the extent that when the Piraeus office learns of the movement of any European cargo, this information is relayed to the New York office so that the latter, not the Piraeus office, may solicit such cargo (A. 69), indicating that central headquarters of the company is in New York, not Piraeus. Reference to the printer's mark in the lower lefthand corner of Hellenic's wage vouchers, on which it tabulates an accounting of the wages paid to Greek seamen it pays off all over the world, shows that these wage vouchers are printed in New York City, not to mention the fact that the printed form of these vouchers is in English (Appendix D to this Brief). More significant is the fact that Hellenic's, Universal's and Transpacific's ships all have English names written on their bows and sterns, in the English language, in addition to the words, in English, "Hellenic Lines" largely emblazoned on their hulls (A. 122, 124, 128, 133, 135). A casual trip to the docks of any port city

will reveal to anyone that real Norwegian, Danish, Polish, German, French, Spanish, Yugoslavian, Turkish, Israeli, Pakistani, Indian, Nationalist Chinese and Japanese vessels, not to mention *real* Greek vessels, trading here, all have foreign names in their own, often peculiar looking alphabets, on their hulls, with an occasional, in the case of non-Roman alphabets, English transliteration also printed underneath. Interestingly, when Callimanopoulos was operating in Greece between 1935 and 1938 before he started over in the shipping business of the U.S., he had been giving his ships Greek names (A. 123).

Petitioner Hellenic obtains its financing from the National City Bank of New York and the Irving Trust Co. in New York (*Tsakonites v. Transpacific Carriers Corp.* (2 Cir. 1966) 368 F.2d 426 at 427. One of Hellenic's directors, a Mr. Frank Slater, is a U.S. citizen and domiciliary (A. 41 & 151). In addition, the Treasurer of the corporation, a Mr. Cajzer, who handles collection of Hellenic's freight charges all over the world, is a U.S. citizen and domiciliary (A. 164).

The inescapable factual conclusion from all the foregoing is that not only is Callimanopoulos personally and commercially domiciled in the U.S. but that also, by consequence thereof, his two figurehead corporations, Petitioners Hellenic and Universal, though of original foreign registration just as Callimanopoulos was originally foreign by birth, are now commercially domiciled in the U.S. and have been since 1945 and 1956 respectively.

In July of 1965 Respondent Rhoditis, a Greek citizen, was employed as a seaman A.B. aboard the s/s HELLENIC HERO in Callimanopoulos' U.S.-India Pakistan Liner Service (A. 75 & 87). He signed a contract with Petitioner Hellenic only, not with Petitioner Universal, providing for his job classification, wages and hours; the contract further provided that any dispute arising out of the employment for which it provided would be adjudicable exclusively by Greek courts applying Greek law (A. 19-20, 67, 85 & Appendices E & F to this Brief). It is clear that the latter provision refers to actions based on breach of the contract or for specific performance, not to tort suits. Respondent can neither read nor write, he did not know the contract papers contained the latter provision, and he signed them without them having been read or explained to him because "the company says they're all right." (A. 191 & 201). Furthermore, no extra compensation — as consideration for his agreement to so restrict his rights — was paid to Respondent by either of Petitioners. Because the HERO, like all Callimanopoulos' U.S. liner service ships, did not come to the Greek mainland (A. 176), he had to join it at Herakleion, Crete, while it was en route between the U.S. and south central Asian ports (A. 74 & 75).

The injury on which this suit is based was sustained by him aboard ship in the Port of New Orleans on August 3, 1965 (A. 192 & 189), and this suit was filed by his counsel on August 13, 1965 (A. 7). In spite of Petitioner Hellenic's knowledge that he was represented by counsel, its agents and employees not only approached him directly, both in New Orleans and upon his return to Greece, with overtures of settlement and

encouragement to abandon this suit (A. 198-199, 24-25 & Appendix C to this Brief), they actually gave him the equivalent of $160.00 in cash directly (A. 76 & 92), a fact which Petitioners now flaunt in their Brief herein, calling this cash "a part of the compensation due him * * * pursuant to the laws of Greece" (Brief of Petitioners, p. 21).

Petitioners have given assurances at all stages of these proceedings that they stand ready to accept service of process in Greece, to appear there and to refrain from defenses of a jurisdictional and statutory limitation nature; in support of the honesty of these assurances they have appended to their Brief a copy of a transcript of proceedings terminating the action instituted in Greece by one Elias Tsakonites after the courts of the U.S. had dismissed his suit against Hellenic and Transpacific, in which the defendants had made the same assurances they are making herein. This transcript reveals first that Hellenic refused to make an appearance in Tsakonites' Greek action, and that only Transpacific actually appeared, secondly that Transpacific did raise a peremptory defense based on a Greek statute of limitations, and finally that all differences between Tsakonites and Transpacific were resolved by voluntary compromise settlement, in which the seaman received the equivalent of about $2,600.00 for injuries that would have been worth at least $50,000.00 in American courts (Petitioners' Brief A-1 — A-7; & A. 76 for factor of converting drachmae to dollars). Thus Petitioners' assurances to Respondent in this case will mean nothing unless Respondent is willing to accept what they are willing to pay, leaving him quite at their mercy in Greece.

This suit originated as a libel under the general admiralty laws of the U.S., *in rem* against the s/s HELLENIC HERO (which Respondent seized at Mobile in the Southern District of Alabama, where security for its release was posted by Petitioners) and *in personam* against Petitioners Hellenic and Universal (A. 7-14). The initial response of Petitioners herein was a plea to the District Court's admiralty jurisdiction (A. 15-17). After discovering that Petitioners had substantial U.S. ties, Respondent also moved the District Court to apply the Jones Act (A. 58). The District Court, sitting without a jury, denied Petitioners' plea to the Court's admiralty jurisdiction (A. 58), and again, after trial without a jury on all questions — jurisdiction, applicable law and the claim on its merits, found the Jones Act applicable but specifically based its award of $6,000.00 to Respondent on not only Petitioners' negligence but also on the unseaworthiness of their vessel (273 F. Supp at 249). It is therefore abundantly clear that the District Court felt that, even if the Jones Act might be inapplicable, its award to the seaman was justifiable anyway on the District Court's exercise of its discretion to retain admiralty jurisdiction of the case and apply the general admiralty law of the U.S. This is further borne out by the fact that the District Court specifically commented that it was taking note of the uncontradicted testimony in the trial record, by Petitioners' witness, Mr. Hennessy, that under Greek law injured seamen are required, as a matter of procedure only, to apply for relief under a "no fault" workmen's compensation type statute (A. 77-78), and that if it then appears "that the captain *or the vessel* failed in some statutory duty owed to the man, then at this Piraeus Court of First Instance, they may make him

an award of indemnity aside from the rights of compensation." (Emphasis added.) (A. 78). Surely the District Court was aware then that according to the proof introduced by Petitioners themselves, the U. S. general maritime law concept of awarding damages to a seaman for a vessel's unseaworthiness causing injury to him is not repugnant to the maritime law of Greece, except merely insofar as the Greek law contains a procedural, not a substantive, requirement that the seaman first provoke a hearing by applying for compensation before his right to damages for unseaworthiness can become ripe for determination.

## SUMMARY OF ARGUMENT

### I

**The law of the nation of the vessel's flag is inapplicable to an alien seaman's tort suit if the flag is not *bona fide* or when, even if it is *bona fide*, there exists some heavy counterweight to it.**

### II

**The permanent resident alien status and U.S. domicile for twenty-five years of a shipowner operating his vessels from the U.S. during that time is a heavy counterweight to such vessels' foreign flags requiring the application of U.S. law to his seamen-employees' tort suits, and in fact establishes that such flags are not *bona fide* foreign.**

III

A provision in a foreign seaman's employment contract calling for exclusive resort to courts of a foreign nation applying that nation's law in the event of a dispute with the employer arising out of the contract can never decide or even affect the question of what law applies to such seaman's tort suit.

IV

Where an Admiralty court of the U.S. exercises its discretion to retain jurisdiction of a foreign seaman's tort suit in which he proves unseaworthiness as well as negligence, and the Jones Act is inapplicable to such suit, the general maritime law of the U.S. can properly be applied if it is not substantively repugnant to the law of the nation of the vessel's flag.

V

A shipowner's hope of a lesser award to a foreign seaman under the law of a foreign nation and the gratuitous payment to the seaman, designated by the shipowner as a partial benefit under such foreign law, can not determine that U.S. law is inapplicable — as having been rendered an optional cumulative remedy — to the seaman's tort suit.

VI

The application of U.S. law to a foreign seamen's tort suit against a shipowner domiciled in the U.S. who has already voluntarily subjected himself to

**U.S. law in many suits has no reasonable tendency to provoke retaliation against the U.S. by the nation of the shipowner's birth from which he has long ago conclusively expatriated himself.**

## ARGUMENT

### I

**In a tort suit for shipboard injuries by an alien seaman invoking U.S. law, against his employer-shipowner corporations and their vessel which are of foreign registry and flag, the law of the vessel's flag, though usually of cardinal importance, is inapplicable if there exists some heavy counterweight to it or the flag is merely one of convenience, and U.S. law is applicable if the U.S. contacts of the vessel and its owners are weightier or more substantial than such other national contacts as they may happen to have.**

Contrary to Petitioners' arguments, neither Respondent nor the Courts in which this action has pended have attempted to disregard or to escape the confines of *Lauritzen v. Larsen* (1953) 345 U.S. 571. Respondent and these Courts have cited *Lauritzen* as authority for their positions all along; the question here is not whether *Lauritzen* applies, for certainly it does, but whether the lower Courts herein have reached a result in accordance with the correct interpretation of *Lauritzen* as it applies to the instant facts.

With respect to the importance of the law of the flag in this type of suit, the *Lauritzen* Court said that "[T]he weight given to the ensign overbears most other connecting events in determining applicable law," and "it

must prevail *unless some heavy counterweight appears.*" (emphasis added). 345 U.S. at 584-86. The Court further recognized that in addition to a heavy counterweight to a *bona fide* foreign flag, a flag of convenience, whether flown by an American or a foreign shipowner, could also serve as a justification for disregarding the law of the flag, when it noted that "a practice has grown, *particularly* among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries." (emphasis added). 354 U.S. at 587.

As to the question whether U.S. law applies in this type of suit if the law of a foreign flag does not, this Court has consistently manifested its intention that this question be answered by "ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved," and "from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority." *Lauritzen v. Larsen,* 345 U.S. at 582. "Hence it must be said that in a particular case something between minimal and preponderant contracts is necessary if the Jones Act is to be applied .... [T]he test is that 'substantial' contacts are necessary." and "The ultimate issue, then, is whether the substantiality of other existing factors establishing a connection with the United States is sufficient to outweigh the 'venerable and universal rule.'" *Bartholomew v. Universe Tankships, Inc.* (2 Cir. 1959) 263 F. 2d 437, 439, *cert. denied,* 359 U.S. 1000.

## II

**A citizen of a foreign nation who has been a permanent resident alien domiciled in the U.S. for twenty-five years, owes his allegiance to the U.S., and where he is the virtual sole owner of a vessel which flies, for purely economic reasons, the flag of the nation of which he is a citizen, and he operates this vessel along with twenty-one others from a base or commercial domicile in the U.S., in a regularly scheduled liner service handling cargo at U.S. freight rates between the U.S. and fifteen nations not including the one of which he is a citizen, with all voyages on such liner service originating and terminating in the U.S., these circumstances as a matter of law sustain the conclusion that the flag is one of convenience, not *bona fide*, and they amount to so much weightier and more substantial contacts with the U.S. than with the flag nation as to pose an effectively heavy counterweight to the flag's law and to warrant the application of U.S. law to a tort suit perfected in a U.S. forum for shipboard injuries sustained in a U.S. port by an alien seaman against such U.S. domiciliary's wholly owned employer-shipowner corporations and his vessel.**

Petitioners concede that the U.S. domicile of the injured seaman would be a sufficiently heavy counterweight to a *bona fide* foreign flag to overthrow the application of its law, a concession to which they admit they are bound by *Uravic v. F. Jarka Co.* (1931) 282 U.S. 234 and *Gambera v. Bergoty* (2 Cir. 1942) 132 F. 2d 414. They then argue however that the U.S. domicile of the shipowner is not a similarly sufficient counterweight, pointing out in support thereof that whereas the *Lau-*

*ritzen* Court used the phrase "Allegiance or Domicile of the Injured", it used only the words "Allegiance of the Defendant Shipowner" in its paragraph headings which guide the reader through the opinion, as if to say that the *Lauritzen* Court did not intend the domicile of the shipowner to be a factor of significance, and Petitioners further argue that the *Lauritzen* Court intended to equate "allegiance" with "citizenship".

Answering Petitioners' argument that the *Lauritzen* Court intended to rule out the shipowner's domicile as a factor of importance, Respondent here quotes from the text of the *Lauritzen* opinion itself:

> "But here again the utmost liberality in disregard of formality does not support the application of American law in this case, for it appears beyond doubt that this owner is a Dane by nationality *and domicile*." (Emphasis added.) 345 U.S. at 587-588.

We are not at liberty to believe that a jurist of the international stature of Mr. Justice Jackson, who wrote for the *Lauritzen* majority, was tossing words around idly when he said "and domicile" with reference to the, there, true alien character of the defendant shipowner. Surely he would not have bothered to include those words in his opinion, which still stands as a masterpiece of complex thought economically and precisely expressed, unless he intended that the shipowner's domicile should be a factor as significant as the factor of the seaman's domicile, and unless he felt that a U.S. domicile of the shipowner would have warranted the

result, opposite to the one reached in that case, of applying the Jones Act. The explanation for the difference in the paragraph headings, with the word "domicile" absent in connection with the shipowner, is that the seaman's lawyers in that case were contending that their client was a U.S. domiciliary by virtue of some transient residence here (a contention the Court rejected), whereas there was no argument and no contention for the Court to accept or reject as to whether the shipowner was anything but a Danish domiciliary, thus leaving the matter of the shipowner's domicile "beyond doubt" by contrast to the matter of the seaman's domicile. It is clear therefore that these paragraph headings in *Lauritzen* reflect no more than the evidence and the argument of counsel peculiar to that case, and should not serve to distract the Court now from the text of the opinion, which was meant for all time and which clearly equates the shipowner's domicile with that of the seaman as an effective counterweight to the law of the flag, plainly indicating that a U.S. domicile of the shipowner is sufficient to warrant the application of U.S. law.

Petitioners, apparently recognizing the weakness of their argument that the shipowner's domicile is not a factor of significance, avoid confronting the fact that they and their owner are domiciled in the U.S. by then pretending that the Fifth Circuit based its decision below on the shipowner's mere residence here rather than on the fact that he is domiciled here, and argue that since Callimanopoulos could change his residence from Canada to Mexico and beyond from day to day, it was error for the Fifth Circuit to apply to this case

the law of the nation of his residence. The irrelevance of this argument consists in Petitioners' refusal to recognize that the Fifth Circuit did not base its decision on Callimanopoulos' mere residence in the U.S. but on the fact that "the HELLENIC HERO was for all commercial purposes owned and operated by a United States *domiciliary*." (Emphasis added.) 412 F. 2d at 923. And the fact remains that after twenty-five years in the U.S. this shipowner has not moved to Canada, Mexico or anywhere else yet.

But in any event, answering Petitioners' argument that according to *Lauritzen* "allegiance" must be equated with "citizenship", Respondent submits that the word "citizenship" was not beyond the reach of this Court, and Respondent finds the significance of the choice, instead, of "allegiance" rooted as far back as the early history of this Court in maritime matters, a history of which Mr. Justice Jackson could not have been unaware.

During that early history, it was the function of this Court, in several cases which arose out of the War of 1812 and the events that led to it, to determine whether certain vessels and goods captured during that period were of "enemy character" and as such liable to condemnation as prizes. Since such a determination depended on what the *allegiance* of their owner was, that is, whether the owner owed his allegiance to one or another belligerent nation in the war or to a non-belligerent nation, this Court fixed, in those cases, a standard for testing the national allegiance of a person as it would affect such person's relations with the whole

world, including not only persons of diversity of allegiance, but also his own co-allegiants. And it should be borne in mind that evidence both intrinsic and extrinsic to the papers of the vessels and their cargoes was admissible to prove the national allegiance of their owners according to this standard in these cases. That standard was most notably expressed in *THE PIZZARO*, 2 Wheat. (U.S.) 227, wherein a citizen of Great Britain, but a resident of Spain, made claim to a portion of the cargo of a Spanish vessel that had been brought to the United States for condemnation as a prize. He based his claim upon the Treaty of 1795 between Spain and the United States making certain concessions to Spanish subjects in cases such as this. It did not appear that he had ever been naturalized as a Spaniard. The Court, treating the claimant as a Spaniard despite his British citizenship, and speaking through Mr. Justice Story, held:

> "Indeed, in the language of the law of nations, which is always to be consulted in the interpretation of treaties, a person domiciled in a country, and enjoying the protection of its sovereign, is deemed a subject of that country. He owes allegiance to that country, while he resides in it; temporary, indeed, if he has not by birth or naturalization, contracted a permanent allegiance; but so fixed that, as to all other nations, he follows the character of that country, in war as well as peace," 2 Wheat. (U.S.) at 245.

Nor was this Court hesitant to apply the same rule against a citizen of the United States domiciled abroad. In *THE VENUS*, 8 Cranch. (12 U.S.) 253, wherein United States citizens domiciled in Great Britain claimed, as consignees of cargo, freight captured from a British vessel by an American privateer prior to the onset of the War of 1812, the captors of the property contended that the residence by United States citizens in Great Britain gave them a British status such as to bar their lawfully claiming the cargo. In upholding this contention of the captors, Mr. Justice Washington stated for the majority:

> "*Now if a permanent residence constitutes the person a subject of the country where he is settled,* so long as he continues to reside there, and subjects his property to the law of reprisals, as part of the property of the nation, it would seem difficult to maintain that the same consequences would not follow in the case of an open and public war ... If then, nothing but an actual removal, or a *bona fide* beginning to remove, can change a national character acquired by domicil and if .... *the property belonged to such domiciled person in his character of a subject,* what is there that .... exempt[s] it from capture by the privateers of his native country." (Emphasis added). 8 Cranch. (12 U.S.) at 283.

Again, in *Johnson v. TWENTY ONE BALES*, 6 Am. L.J. 68, 97 (D. N.Y.) it was held that a citizen of the United States who had resumed his residence in

Great Britain could not claim goods captured during the War of 1812 from a merchant vessel by an American privateer, on the ground that he had become stamped, by virtue of his British residence, with the national character of that land notwithstanding his American citizenship (p. 85):

> "I think it may be assumed as a principle, that the law of nations without regarding the municipal regulations prescribed for his admission, views every man as a member of the society in which he is found. Residence is *prima facie* evidence of national character; susceptible, however, at all times of explanation, if it be for a special purpose and transient in its nature, it shall not destroy the original or prior national character. But if it be taken up *animus manendi*, with the intention of remaining, then it *becomes a domicil, superadding to the original or prior character, the rights and privileges, as well as the disabilities and penalties of a citizen or subject of the country in which the residence is established.*" (Emphasis added).

That the courts of other nations during that period were adopting the same attitude is evident from the following language of the British jurist Sir William Scott in *THE INDIAN CHIEF* (England) 3 C. Rob. Adm. 12:

> "He came however to this country [England] in 1783, and engaged in trade and has resided

> in this country till 1797; during that time he was undoubtedly to be considered as an English trader; for no position is more established than this, that if a person goes into another country, and engages in trade, and resides there, he is by the law of nations to be considered as a merchant of that country; I should therefore have no doubt in pronouncing that Mr. Johnson was to be considered as a merchant of this country, at the time of the sailing of this vessel on her outward voyage." (Brackets added). 3 C. Rob. Adm. 12, 18.

And the foregoing opinion was cited with approval by Mr. Justice Story of this Court in *THE FRANCIS*, Fed. Cas. No. 5034, affirmed, 8 Cranch. (12 U.S.) 363 at 673-674:

> "Such then being the domicil and national character of Mr. Gillespie, he must, according to the settled rules of public law, be deemed to partake of the advantages and the hazards of a British merchant [though a citizen of the United States], in peace and in war. For all commercial purposes, it is quite immaterial, what is the native or adopted country of a party. He is deemed a merchant of that country, where he resides, and carries on trade. The Indian Chief, 3 C. Rob. Adm. 12." (Brackets added.)

Since no vessels or cargoes have been brought into a U.S. prize court in over a hundred years, there has

been no continuing jurisprudence on this subject *per se*, but this Court as well as other courts of the U.S. have since then continued to deem that permanent resident aliens domiciled in the U.S. owe their *allegiance* to this country in peace as well as in war; *THE DOS HERMANOS*, 2 Wheat. 76, 96, 15 U.S. 37, 46; *THE VENICE*, 69 U.S. 258, 275; *Mitchell v. U.S.* (1875) 88 U.S. (21 Wall.) 310, 22 L. Ed. 584, 586; *Carlisle v. U.S.*, 83 U.S. 147; *U.S. v. Chin Quong Look*, 52 F. 203; *Leonhard v. Eley* (10 Cir. 1945) 151 F. 2d 409, 410; and *Kwong Hai Chow v. Colding* (1953) 344 U.S. 590, 596, 97 L. Ed. 576. That Mr. Justice Jackson actually had the prize cases in mind is evident from his citation of Grotius on the Law of Prize (Grotius, de Jure Praedae) in Footnote No. 15 of the *Lauritzen* opinion, 345 U.S. at 583.

In spite of the fact, as mentioned above, that the foregoing authorities in some instances specifically resolve the question of allegiance as against the *world*, Petitioners insist that these authorities are restricted exclusively to cases of a resident alien's relations with the U.S. and cannot apply to Callimanopoulos' relations with Respondent, a Greek. Respondent answers however that the question whether the Jones Act applies to Callimanopoulos or his corporations in such a case as this *is* a question involving Callimanopoulos' relations with the U.S., for surely the Jones Act is deemed to be strongly affected with the national interest; cf. *Strathearn Steamship Co. v. Dillon* (1920) 252 U.S. 348 at 354-355.

Petitioners' theory that domicile is so inconsequential that Greek shipowners domiciled in the U.S. are

movable islands of Greek law unto themselves, except where the interest of the U.S. or its citizens is directly involved, can not be accepted without entailing peculiar results, for in a case where one such Greek shipowner domiciled in the U.S. has personally committed a tort, in the U.S., on another such Greek shipowner similarly situated in the U.S. like himself, it would follow from Petitioners' theory that our courts must apply the standards of conduct and monetary awards of Greek law to such victim's cause of action. Taking Petitioners' theory a step farther, Greek law would apply to such a tort, committed in the U.S., by such U.S. domiciled Greek on a citizen of England or other foreign nation also domiciled in the U.S., since, according to Petitioners, no interest of the U.S. or its citizens is directly involved. Theories must always be tested by the soundness of their ultimate results, and by that test, administered in a conflict of laws context, Petitioners' theory obviously fails.

Respondent submits therefore that the language of *Gambera v. Bergoty, supra,* at 132 F. 2d 416, relative to seamen, was intended by Mr. Justice Jackson in *Lauritzen* to apply to alien shipowner-employers domiciled here:

> "It is extremely unlikely that Congress should have meant to exclude aliens who, in every sense that mattered, were members of that class *merely because they had not been naturalized.*" (Emphasis added.)

Respondent is aware that, whereas on the one hand

the U.S. domicile of an injured seaman amounts to an effective counterweight to the law of a foreign flag but does not in itself even tend to establish that such flag is not *bona fide*, on the other hand the U.S. domicile of a shipowner can be considered either as amounting to an effective counterweight to the law of a foreign flag or as simply establishing that such flag is not *bona fide*. The distinction is in either event immaterial, for even if Petitioners' contention that the s/s HELLENIC HERO's Greek flag is not one of convenience but *bona fide* is accepted, the fact remains that, in accordance with *Lauritzen*, the U.S. domicile of Callimanopoulos poses an effective counterweight to that flag's law. But Petitioners' contention that the vessel's Greek flag is *bona fide* can not be accepted, for it is really based on nothing more than the fact that Callimanopoulos was born in Greece; the shipping enterprise he started in Greece had been reduced to nought in World War II by the time he first came here, such that all his present shipping activity is a creature of purely U.S. origin. Under these circumstances his resumption of the use of Greek flags after he came here is not entitled to be treated any differently in the eyes of the law than the purchase of a Greek merchant flag by a U.S. citizen would be, just because Callimanopoulos was born in Greece.

Nor can Petitioners reasonably contend that, since it is they, not Callimanopoulos, who have been sued herein, his U.S. domicile can not affect their original foreign registry, for they, being mere figureheads of Callimanopoulos, are now and have long been commercially domiciled here. The foregoing authorities

amply support the proposition that commercial as well as personal domicile in a country is a predicate for allegiance thereto, but other, more recent cases, directly concerned with shipping transactions, have explicitly held that the commercial domicile in the U.S. of a corporation of foreign registry is sufficient to require its subjection to the Jones Act by simply considering it an American corporation. Thus the Court in *Bartholomew v. Universe Tankships, Inc., supra,* 263 F. 2d at 442 said:

> "What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act."

Similarly, in *Voyiatzis v. National Shipping & Trading Corp.* (S.D. N.Y. 1961) 199 F. Supp. 920, the Court, speaking of a Panamanian shipowner corporation commercially domiciled in the U.S., said that "the shipowner and the ship's agents are, for our purposes, both American nationals;". 199 F. Supp. at 925.

In two other cases, *Southern Cross Steamship Co. v. Firipis* (4 Cir. 1960) 285 F. 2d 651, and *Pavlou v. Ocean Traders Marine Corp.* (S.D.N.Y. 1962) 211 F. Supp. 320, foreign shipowner corporations — which had hired corporations of the U.S. as their general agents and turned over to them all mangerial and operational functions to be performed by them in the U.S. — were subjected to the Jones Act, in the latter case on the

express theory that a U.S. "base of operations", which was not described in *Lauritzen* as a factor of importance in the same language, is a factor requiring the overthrow of the law of a foreign flag and the application of the Jones Act. Subsequent writers, commenting on *Pavlou,* have tended to regard this as an eighth factor worthy of consideration, notably the Fifth Circuit in this case below; 412 F. 2d at 923. But it is clear that the phrase "base of operations" is no more than another way of describing the *Lauritzen* factor of the domicile of the defendant shipowner where the commercial domicile of a corporate shipowner is involved, as in *Southern Cross* and *Pavlou,* rather than the personal domicile of an individual shipowner, as in *Lauritzen.*

Furthermore, even in *Lauritzen,* where no corporate shipowner was involved, there are clear and unmistakable indications that, had there been a foreign corporate shipowner performing all its managerial and operational functions from a U.S. "base" or commercial domicile rather than merely a *bona fide* foreign individual using a U.S. agent incidentally to his transitory contacts with the U.S., the result would have been different. Mr. Justice Jackson said:

> "The 'doing business' which is enough to warrant service of process may fall quite short of *the considerations necessary to bring extraterritorial torts to judgment under our law.*" Emphasis added.) 345 U.S. 571 at 590.

And earlier in the opinion he had said:

> If, to serve some *immediate* interest, the courts of each [nation] were to exploit *every such* contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea." (Brackets and emphasis added.) 345 U.S. 571 at 581.

Surely Mr. Justice Jackson had in mind some "considerations" that would have sufficed to bring even an extraterritorial tort to judgment under our law. Can it be seriously doubted that there are present here, at the very least, "the considerations necessary to bring" an *intraterritorial* tort "to judgment under our law", seeing that to do so would not amount to exploiting every one of a small group of U.S. contacts purely incidental to a *bona fide* foreign concern to serve some immediate and transitory interest, but would amount instead to treating two corporations and their owner, commercially and personally domiciled here, in the same way our courts have been treating such creatures for over one hundred and fifty years? Surely the line drawn by *Lauritzen*, excluding from the application of the Jones Act foreign shipowners who do no more than enough of an incidental business here to get served with process, can not be deemed to similarly fence off the instant Petitioners.

Petitioners then argue that the "base of operations" factor of *Pavlou* has been overruled by implication by the Second Circuit in *Tjonaman v. A/S Glittre and*

*Fearnley & Eger* (2 Cir. 1965) 340 F. 2d 290, cert. den. (1965) 381 U.S. 924, reh. den. (1965) 382 U.S. 873. Respondent is at a loss to see how Petitioners can base this argument either on *Tjonaman's* result or its language. There, the Jones Act was held inapplicable to the claim of a Dutch seaman, injured off the coast of Ghana in the service of a *bona fide* Norwegian flag, against a *bona fide* Norwegian shipowner who had no U.S. base of operations. The Second Circuit merely noted that *Pavlou,* along with *Brillis v. Chandris* (S.D. N.Y. 1963) 215 F. Supp. 520 (which it also did not overrule), had interpreted *Lauritzen* narrowly to apply to cases with practically identical facts (an unjustified construction of *Pavlou's* language anyway), whereas this interpretation, the Second Circuit merely said, was unnecessary. Furthermore, Respondent notes that even in *Tsakonites, supra,* the case in conflict herewith, the Second Circuit mentioned *Pavlou,* not as having been overruled in *Tjonaman,* but simply as a case which "attached considerable significance to the base of business operations," (368 F. 2d at 428), and then said nothing more about it. Respondent can only conclude that the Second Circuit in *Tsakonites* felt that *Pavlou* was factually distinguishable, a question which depends on what factual proof was present in *Tsakonites.* But even granting, *arguendi gratia,* that *Pavlou* has been overruled, what significance, Respondent asks, has that here? In both *Pavlou* and *Southern Cross* the *foreigners who stayed at home,* but hired corporations of the U.S. to perform all their managerial and operational functions in the U.S. (Orion Steamship Company and Eastern Steamship Company were the U.S. corporations, respectively, in those cases.), *were subjected to the Jones Act;* how much more is Callimano-

poulos, who has personally immigrated to our shores with his corporate entourage and pitched his tent here to run the show himself, subject to the Jones Act? These questions answer themselves.

But what really puts the teeth in Respondent's contention that the commercial domicile or base of operations of a *corporate* shipowner is to be considered as the domicile of the defendant shipowner, within the meaning of *Lauritzen* for purposes of choice of law, is the fact that even where the stockholders in such a corporation are U.S. *citizens,* but the corporation does not have its commercial domicile in the U.S. and its ships are not controlled from a U.S. base of operations, the Jones Act does not apply. This was the holding of the U.S. District Court for the Southern District of New York in no less than three cases, *Argyros v. Polar Compania De Navegacion Ltda.* (S.D.N.Y. 1956) 156 F. Supp. 624, *Mproumeriotis v. Seacrest Shipping Co.* (S.D.N.Y. 1957) 149 F. Supp. 265 and *Moutzouris v. National Shipping & Trading Co.* (S.D.N.Y. 1961) 194 F. Supp. 468. All these three cases relied on *Lauritzen* and in all three the Court specifically pointed out that the *only* connective factor with the U.S. was the U.S. citizenship of the corporate stockholders, leaving it beyond doubt that there were no U.S. corporate commercial domiciles or bases of operation. Furthermore, Respondent emphasizes that these three cases, when taken with the holding in the *Pavlou* case, *supra,* in which the Jones Act was applied by the Southern District of New York where the vessel was owned by foreign corporate stockholders but controlled from a U.S. base or commercial domicile, and when taken further with the Southern District of New York cases of *Zielinski v.*

*Empresa Hondurena de Vapores* (S.D.N.Y. 1953) 113 F. Supp. 93, *Bobolakis v. Compania Panamena Maritima San Gerassimo, S.A.* (S.D.N.Y. 1958) 168 F. Supp. 236, and *Voyiatzis, supra*, in which the Jones Act was applied where the ultimate vessel owning corporate stockholders were U.S. citizens *and* there were U.S. bases of operations and commercial domiciles, leaves the conclusion utterly inescapable that it is an ironclad rule within the Second Circuit that *no matter what* the citizenship of the ultimate corporate vessel owning stockholders is, the Jones Act applies if, and only if the ship is controlled from a U.S. base or commercial domicile. These seven cases last cited, having isolated the common denominator of "base of operations" or commercial domicile so nicely from such a welter of possible combinations of circumstances, are, taken together, absolutely insusceptible of any other interpretation.

Petitioners also make the argument that the sole basis for the Fifth Circuit's decision in this case below was the occurrence of the within tort in the U.S. Other courts have expressed the view that the occurrence of the tort in U.S. waters is "undoubtedly a factor of significance" (*Bartholomew v. Universe Tankships, Inc., supra*, 263 F. 2d at 441) and that such fact, coupled with operation of the vessel from the U.S., would require the application of U.S. law; *Southern Cross, supra*, 285 F. 2d 651 at 655. What the Fifth Circuit actually said in this case below was that "[t]his alone would not be sufficient to invoke the Jones Act [citing *Romero v. International Terminal Operation Co.* (1959) 358 U.S. 354, 3 L. Ed. 2d 368]" but "when combined with the totality of American contacts, the fact that the accident occurred in our territorial waters *points*

to Jones Act applicability." (Emphasis added). 412 F. 2d 919 at 924-925. Indeed, Respondent notes that as between the two Second Circuit cases of *Gambera v. Bergoty, supra,* and *O'Neill v. Cunard White Star, Ltd.* (2 Cir. 1947) 160 F. 2d 446, cert. den. 332 U.S. 773, 92 L. Ed. 358, the common denominator of the place of the wrongful act was also nicely isolated. In both cases the seamen were foreign citizens, each had been domiciled in the U.S. for, coincidentally, twenty years, and each had applied for U.S. citizenship; and in both cases the defendant shipowners were *bona fide* foreign. In applying the Jones Act to Gambera's claim the Second Circuit regarded as significant the fact that the voyage on which he was injured in U.S. territorial waters originated and terminated in the U.S., and in denying Jones Act coverage in *O'Neill* the Second Circuit distinguished *Gambera* on the expressly stated ground that the wrongful act occurred on the high seas on a voyage which originated and terminated in England. So neatly do these two cases isolate this factor that, again, the conclusion is inescapable that it is a rule of the Second Circuit that, coupled with the U.S. domicile of a party, the occurrence of the tort in U.S. waters on a voyage originating and terminating in the U.S. not only "points to" Jones Act applicability but *demands* its application.

## III

**A provision in an alien seaman's employment contract, purporting to oust in advance the applicability of all but the law of a foreign nation to his disputes with his employer arising out of the contract, can never decide or even affect the question of Jones Act appli-**

**cability to a tort suit by such seaman, both because the terms of a seaman's employment contract were not a factor included in the seven factor test of *Lauritzen v. Larsen* which controls the resolution of this Jones Act applicability question and because no contract, rule, regulation or device is competent to abrogate a maritime employer's liability under the Jones Act if it is found applicable by virtue of this seven factor test; nor can such contract be enforced by the vessel owner which was not a party to it; and such contracts are in any event *ipso facto* void in the eyes of international maritime law, especially where the seaman, being illiterate, is induced, by assurances of his employer that it is alright, to sign it without having had it read or even explained to him and without receiving any extra compensation for his agreement, since general maritime law requires that the meaning and significance of such restrictive provision in a seaman's employment contract must be explained to the seaman even if he is not illiterate and that the seaman be paid extra compensation as consideration for agreeing to restrict his rights. And because such a restrictive provision in the seaman's employment contract was the sole basis of the decision not to apply U.S. law in the *Tsakonites* case, such decision was error.**

What the terms of the injured seaman's employment contract are was not made one of the seven factors of significance in *Lauritzen;* while the place of the contract was accorded some weak significance, its terms were given none. Subsequent writers have nevertheless been misled by some language of the *Lauritzen* opinion into the belief that a provision in a foreign

seaman's employment contract calling for the exclusive resort to the courts of a foreign nation applying only that nation's law can determine that the Jones Act does not apply to such seaman's tort suit against his employer. These writers are clearly guilty of bad reading.

In *Lauritzen*, as here, there was such a contract. But the *Lauritzen* language referred to actually made it sun clear that "a Jones Act suit is for tort" and "does not seek to recover anything due under the contract or damages for its breach." (345 U.S. at 588) and then went on to set forth, by way of dictum, what law *would* apply only *if* the suit were a *contract* action:

> "But *if* contract law is nonetheless to be considered, we face the fact that this contract was explicit that the Danish law and the contract with the Danish union were to control. Except as forbidden by some public policy, the tendency of the law is to apply *in contract matters* the law which the parties intended to apply. We are aware of no public policy that would prevent the parties to this contract, which contemplates performance in a multitude of territorial jurisdictions and on the high seas, from so setting upon the law of the flag-state as their governing code." (Emphasis added). 345 U.S. at 588-589.

The conclusive proof that this Court did not intend the terms of such a contract to be a factor of significance in determining Jones Act applicability lies in the following statement at 345 U.S. 589:

> "We think a quite different result would follow if the contract attempted to avoid applicable law..."

Obviously, this Court was saying in the last quoted passage that something (the seven factor test) *other than the contract* must determine what law is applicable *in the first place* and that then the contract itself can not shake this determination. Such a statement is completely consistent with the Jones Act itself, which provides:

> "Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this chapter, shall to that extent be void." 45 U.S.C.A. § 55, incorporated by reference into the Jones Act, 46 U.S.C.A. § 688.

For this very reason it was recognized by the Court in *Voyiatzis, supra,* 199 F.Supp. at 925, and *Pavlou, supra,* 211 F.Supp. at 322, that a Greek employment contract such as the one in the instant suit can not oust the Jones Act if it is otherwise applicable.

Thus the tail can not wag the dog; the contract can not decide or even affect the question of Jones Act applicability, which must be determined on the basis of the other seven factors specified by *Lauritzen.* It is lamentable, however, that two Judges of a Court such as the Second Circuit, the experience and prestige of which as an Admiralty forum are long and well recognized, went astray and foundered into error by

allowing such a contract to decide that the Jones Act did not apply to Petitioner Hellenic in a suit against it by a Greek seaman for injuries received by him aboard ship in the port of New York, in *Tsakonites v. Transpacific Carriers Corp. and Hellenic Lines, Ltd.* (2 Cir. 1947) 368 F.2d 426, cert. den. 386 U.S. 1007.

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**The *Tsakonites* Decision**

With admirable fairness the Second Circuit first set forth all the proven facts establishing Petitioner Hellenic's ties with the U.S., 368 F. 2d at 426-427. It then reviewed and discussed, with remarkable clarity and understanding, the seven factors of *Lauritzen* which *should have* governed its decision, 368 F. 2d at 427-428. After the Second Circuit had thus suspended one's expectation as to how the *Lauritzen* test would resolve the significance of those facts, this is how the Second Circuit then decided the case:

> "His employment contract by its terms limits his rights to those arising under Greek law — a factor to which weight must be given because it represents plaintiff's jurisdictional choice." 368 F. 2d at 428.
>
> * * *
>
> "Also not to be ignored, is the fact that this Greek seaman, whose residence is in Greece, who is or is not presumed to be familiar with the rights and privileges under Greek law of those who serve in the crew on Greek ships, signed articles in which he agreed to be sub-

> ject to those laws. He doubtless did not have the slightest knowledge of the provisions of American statutes enacted for the benefit of American seamen by our Congress for their protection. It is not unfair to have him abide by his agreement. As said by the Greek government in its *amicus* brief with respect to these agreements: 'These collective bargaining agreements contemplate the hiring of Greek seamen under Greek law aboard Greek flag vessels, and contemplate the payment to these seamen in the event they are injured, of benefits under Greek law and in accordance with the Greek social welfare programs.' International comity requires respect for such agreements." 368 F. 2d at 429.

These two judges, apparently conceding their own uncertainty about the case, had stated earlier in the opinion that:

> "The present case presents a combination of factors the significance of which is not conclusively established by existing cases" 368 F. 2d at 428.

It is clear therefore that the two Judges of the Second Circuit majority took the easy but the wrong way out of what they admitted they found to be a difficult situation. They not only did not even follow the rules in existence in their own Circuit, as is evident from the cases from that Circuit cited in this Brief, cases which they did not even begin to indicate they meant to overrule in *Tsakonites*, but they flew right in the face of *Lauri-*

*tzen*'s ruling out of the terms of the contract as a significant factor. Nevertheless, Tsakonites' Petition for Writ of Certiorari in this Court did not even mention this question of the contract's significance, much less present it for review. Rule 23(c) of this Court being to the effect that questions not presented for review will not be considered, Respondent can only assume that certiorari was denied in that case (386 U.S. 1007) because this Court was obliged by the Petition to look no farther than the other reasons of the Second Circuit, which, though sound, did not really decide the outcome of that case.

Respondent notes in any event that there are other compelling reasons why contracts of this type have no validity in determining choice of law. In *Retzekas v. Vygla Steamship Co., S.A.* (District of Rhode Island 1960) 193 F. Supp. 259 at 260, the Court categorically stated:

> "Under general maritime law said collective bargaining agreement has, in my judgment, no validity insofar as it attempts to apply Greek law."

The reason for this, as stated in *Voyiatzis, supra,* also involving a Greek employment contract is that:

> "Seamen are traditionally wards of the admiralty, partly, it is said, because of their alleged improvident nature and the hazardous nature of their calling, and in view of the special treatment generally accorded them in the

law, it is not at all surprising that agreements by them similar to that here involved, though contained in the shipping articles, have at times simply been ignored by the courts." 199 F. Supp. at 924.

Furthermore, in *Blanco v. Phoenix Compania de Navegacion, S.A.* (4 Cir. 1962) 304 F. 2d 13, where the seaman had agreed to limit the value of any injury to each part of his body to a specific dollar amount under Spanish law, the Court thoroughly repudiated such exclusive remedy contracts in their entirety as follows, 304 F. 2d at 14-16:

"'From time immemorial, seamen have been called the 'wards of admiralty'," and perhaps no other group is provided the protective care that courts of admiralty traditionally extend to them. In Mr. Justice Story's classic statement:

> 'They are considered as placed under the dominion and influence of men, who have naturally acquired a mastery over them; and as they have little of the foresight and caution belonging to persons trained in other pursuits of life, the most rigid scrutiny is instituted into the terms of every contract, in which they engage. If there is any undue inequality in the terms, any disproportion in the bargain, any sacrifice of rights on one side which are not compensated by extraordinary benefits on

the other, the judicial interpretation of the transaction, is that the bargain is unjust and unreasonable, that advantage has been taken of the situation of the weaker party, and that pro tanto the bargain ought to be set aside as inequitable.' Harden v. Gordon, 11 Fed.Cas. 480, 485 (No. 6047) (C.C.Me. 1823).

"Again, Mr. Justice Story has emphasized: 'Whenever * * * any stipulation is found in the shipping articles which derogates from the general rights and privileges of seamen, courts of admiralty hold it void * * * unless two things concur: First, that the nature and operation of the clause is fully and fairly explained to the seamen; and secondly, that an additional compensation is allowed, entirely adequate to the new restrictions and risks imposed upon them thereby.' Brown v. Lull, 4 Fed. Cas. 407, 409 (No. 2018) (C.C. Mass. 1836)."

* * *

"On examination of the contract in the present case, its inequity is manifest. In return for the absolute right to recover negligible damages, the seaman surrendered his substantial right to recover full indemnity for any loss or damages suffered in consequence of the unseaworthiness of his ship. An admiralty court would be derelict in its duty were it to honor

this agreement. We hold it invalid as a matter of law.

"Moreover, certain decisions go further, strongly indicating that any attempt whatever by a ship to limit its liability to a seaman under the General Maritime Law is against public policy and ipso facto void, irrespective of the fairness of the terms of the agreement. [Citing cases]

* * *

"These authorities are not without support in the Supreme Court. In Cortes v. Baltimore Insular Lines, 287 U.S. 367, 371, 53 S. Ct. 173, 77 L. Ed. 368 (1932), Justice Cardozo, after discussing the duty imposed by the law upon a ship to provide, as an incident of the employment, maintenance and cure to a seaman who falls ill during a voyage and to indemnify him for loss of damage caused by an unseaworthy condition, states categorically: '[G]iven the relation, no agreement is competent to abrogate the incident.' " 304. F.2d at 14-16.

But even if Respondent's contract with Petitioner Hellenic could decide that Greek and not U.S. law is applicable to this suit, such conclusion would leave intact the Judgment below against Petitioner Universal, which was not a party to the contract, for no one can be compelled, despite nondisclosure in a contract, to deal under that contract with persons with whom

he does not wish to deal, *Arkansas Valley Smelting Co. v. Belden Mining Co.* (1888) 127 U.S. 379, 32 L. Ed. 246.

## IV

**Where, in an alien seaman's tort suit for shipboard injuries invoking both the Jones Act and the general maritime law of the U.S., the U.S. District Court of the district where the seaman has obtained process against the vessel finds the Jones Act applicable but specifically predicates its award to such seaman on unseaworthiness as well as negligence, then a reviewing court holds the Jones Act inapplicable by virtue of the seven factor *Lauritzen* test, the District Court's award will be allowed to stand as being justified by a U.S. Admiralty court's discretion to retain jurisdiction of the case and apply the general maritime law of the U.S., which provides relief for unseaworthiness, where such law's only repugnance to the maritime law of the nation of the vessel's flag is procedural, not substantive, and especially where relegation of the seaman to a distant foreign forum long after the occurrence of the tort would result in substantial injustice to him by requiring him to start all over again without the help of his U.S. counsel who had prepared the proofs necessary to establish liability.**

Respondent here argues, solely in the alternative that the Jones Act is held inapplicable herein, that the award to him below would still be justified on the basis of his concurrent claim for damages under the general maritime law of the U.S. for unseaworthiness.

It has always been held in cases of this type that the proper policy to be followed by an Admiralty court sitting in the place where the seaman has perfected his suit by process on the vessel itself, as here, is to favor retaining jurisdiction unless the pleader against it can sustain the burden of showing that to do so would work an injustice to it, and not vice-versa, in other words, not that the policy should be in favor of declining jurisdiction unless the adversary in plea can prove that declining jurisdiction would prejudice him; this is especially so in cases where the danger exists that the seaman will be forced, long after the occurrence of the tort, to try to prove his case in a distant foreign forum where it is uncertain that relief will be forthcoming, the right of a maritime claimant, especially a seaman, to proceed against the vessel in the place where he can find it being something akin to the sacred in Admiralty law; *THE BELGENLAND* (1885) 114 U.S. 355; *Anastasiadis v. s/s LITTLEJOHN* (5 Cir. 1965) 339 F. 2d 538; *Carbon Black Export, Inc. v. s/s MONROSA* (5 Cir. 1958) 254 F. 2d 297; *Motor Distributors, Inc. v. Olaf Pedersen's Rederi A/S, Owner of THE SUNNY PRINCE* (5 Cir. 1957) 239 F. 2d 463; *San Pedro Compania Armadoras, S.A. v. Yannacopoulos* (5 Cir. 1966) 357 F. 2d 737; *Kontos and Zarifis v. THE s/s SOPHIE C.* (E.D.Pa. 1960) 184 F. Supp. 835, 1960 A.M.C. 1344; and *Gkiafis v. Steamship YIOSONAS* (4 Cir. 1967) 387 F. 2d 460. And the decision of an Admiralty court of first instance, sitting without a jury, can not be set aside on review in the absence of a showing of gross abuse of discretion; *MacAllister v. U.S.* (1954) 348 U.S. 19; *Gutierrez v. Waterman Steamship Corp.* (1963) 373 U.S. 206; *Morales v. City of Gal-*

*veston* (1962) 370 U.S. 165; *Roper v. U.S.* (1961) 368 U.S. 20; and *Caribbean Federation Lines v. Dahl* (5 Cir. 1963) 315 F. 2d 370, cert. den. (1963) 373 U.S. 831.

Respondent concedes that none of the foregoing cases do anything to resolve the question of what law should apply under the instant circumstances, if the Jones Act does not, after jurisdiction was retained herein by the District Court for the Southern District of Alabama. But the case of *THE FLETERO v. Arias* (4 Cir. 1953) 206 F. 2d 267, cert. den. (1953) 346 U.S. 897, 98 L. Ed. 398, does answer this question.

*THE FLETERO* was a damage suit by an Argentine seaman against a *bona fide* Argentine flag and its *bona fide* Argentine corporate owner for injuries sustained aboard ship in a U.S. port; there, as here, the District Court based its award to the seaman on both negligence under the Jones Act and unseaworthiness under the general maritime law of the U.S. On appeal, the Fourth Circuit, applying the *Lauritzen* test, correctly concluded that the Jones Act was inapplicable but affirmed the award below as being equally based on liability for unseaworthiness under the general maritime law of the U.S., on the ground that such liability could be sustained by the law of Argentina without reference to the Jones Act; for there, as here, the Fourth Circuit noted, there was a requirement in the law of the flag state (Argentina) that the seaman first provoke a workmen's compensation type hearing before his claim based on unseaworthiness could become cognizable. This, the Fourth Circuit said, is merely a procedural requirement and need not be followed

in the U.S. Chief Judge Parker of the Fourth Circuit said:

> "In other words, the law of the Argentine merely requires that, before resorting to its courts, an injured seaman claiming damages because of the unseaworthiness of the vessel or the negligence of the owner must first exhaust the administrative remedy provided by the Workmen's Compensation Act; this, however, is a mere matter of procedure, as to which the law of the forum and not that of the foreign nation governs. Heredia v. Davies, supra, 4 Cir., 12 F. 2d 500, 501; Pritchard v. Norton, 106 U.S. 124, 129, 1 S. Ct. 102, 27 L. Ed. 104; Minor on Conflict of Laws, par. 205 et seq.; A.L.I. Restatement Conflict of Laws secs. 584, 585." 206 F. 2d 267 at 273-274.

Here, Petitioners' argument that Respondent has not proved Greek law will not suffice; Petitioners themselves proved, by the testimony of their witness Mr. Hennessy, that Greek law allows recovery of damages for a failure of duty owed to a seaman on the part of the *vessel* and only predicates a prior workmen's compensation type proceeding as a prerequisite to claiming damages on this ground, testimony of which the District Court below sat up and took particular notice (A. 77-78) and on which the Fifth Circuit also specifically commented (Footnote No. 6, last paragraph, 412 F.2d at 922).

V

**The certainty that an award to a seaman for injuries will be less under the law of a foreign nation than under U.S. law is not a significant consideration influencing choice of law in a seaman's tort suit; nor can U.S. law be rendered inapplicable, as providing an optional remedy cumulative to that afforded by a foreign law, by virtue of an employer-shipowner's bad faith conduct in directly paying cash to the seaman, already represented by counsel prosecuting his tort claim under U.S. law, just because the employer-shipowner chooses to designate such payment as a partial benefit due under that foreign law, since gratuitous payment of benefits, even to an unrepresented claimant, can never determine what law is ultimately applicable.**

Petitioners suggest that the real thrust of Respondent's almost five years' efforts to apply American law to this claim is a hope of greater recovery under U.S. than under Greek law. They are absolutely correct about that, but Respondent has never advanced this as a legal reason for applying U.S. law, and certainly the Judges who have had a part in the resolution of this case below in favor of Respondent can not be accused of any dishonesty in stating the reasons for their decision. Respondent merely points out that this fight over money is a two-sided one and that Petitioners, in "forsaking their [recently] espoused loyalty to [Panama] and insisting on the contractual provision for Greek law and a Greek forum" (Brackets added.) (*Voyiatzis, supra,* 199 F. Supp. at 923.) evince just as much a concern over money as Respondent does. In-

deed, a glance at *Rodriguez v. Gerontas Compania de Navegacion, S.A.* (S.D.N.Y. 1957) 150 F. Supp. 715, affirmed (2 Cir. 1958) 256 F. 2d 582 and *Morewitz v. s/s MATADOR* (4 Cir. 1962) 306 F. 2d 144, in which those Courts doled out to the injured seamen plaintiffs the extremely liberal benefits of the Panama Labor Code and Civil Code, bears out this certainty as to Petitioners' motives. What this Court is confronted with herein are two would-be international vagabonds determined to avoid a final or fair judicial reckoning anywhere, and their sanctimoniousness over Respondent's hope of a greater amount of recovery is hardly entitled to respect, especially when it appears that these Petitioners made a direct cash payment to Respondent after being placed on notice by this lawsuit that he was already represented by counsel. In so doing they have run afoul of a stern stricture as old as the law, to which a postscript has recently been added, under remarkably similar circumstances, in *Katopodis v. Liberian S/T OLYMPIC SUN* (E.D. Va. 1968) 282 F. Supp. 369. Petitioners describe their cash payment to Respondent as representing a part of the compensation due him under Greek law, but money is insusceptible of such a label, at least insofar as the same might be exploited to stigmatize the laws of the U.S. or any other law as an optionally cumulative remedy; nor can Petitioners' payment or Respondent's acceptance of such money determine what law is applicable; *Pacific Steamship Co. v. Peterson* (1928) 278 U.S. 130, 73 L. Ed. 220 (acceptance of wages and Admiralty maintenance and cure held not to preclude applicability of Jones Act); *Pritt v. West Virginia N.R. Co.* (W. Va. 1948) 132 W. Va. 184, 51 S.E. 2d 105, cert. den. (1949) 336 U.S. 961, 93 L. Ed. 1113 (acceptance of state workmen's com-

pensation benefits held not to preclude applicability of Jones Act); and *Lauritzen, supra*, (payment of foreign workmen's compensation benefits to and acceptance thereof by foreign seaman mentioned in opinion, at 345 U.S. 573-576, but not included as factor of significance in seven factor test). The former two cases also indicate that the payor of such gratuitous benefits is entitled to credit for them against the claimant's recovery under the ultimately applicable law, but Petitioners, rather than formally assert a set-off or counterclaim herein for their payment, have chosen instead to gamble all out on the clearly erroneous argument that what they have paid Respondent can determine choice of law just because they choose to designate it as benefits under one law rather than another. Respondent submits that Petitioners could not possibly be subjected to optional cumulative liabilities by virtue of the application of U.S. law to them, unless they themselves voluntarily continue to also make additional gratuitous payments under Greek law to claimants against them, but that in any event such irrational behavior on their part can never determine applicable law.

## VI

**International retaliation, political and diplomatic friction and a blight of shipping directed against the U.S. by a foreign nation in order to avenge the application of the Jones Act or the general maritime law of the U.S. to a corporation registered in such foreign nation is a remote and unreasonable prospect, especially where such foreign corporation has already conclusively expatriated itself from the nation of its registry and voluntarily subjected itself to the law of the State of New York and to the laws of the U.S. on many previous occasions.**

Petitioners finally argue, with menacing fulminations, that application of U.S. law hereto would constitute such a breach of comity as to justify some sort of retaliation against the U.S. from Greece. Respondent does not think the Jones Act or the general maritime law of the U.S. will cause World War III or even blight international shipping, surely not as a result of their being applied in this case. What Mr. Justice Jackson said in *Lauritzen* was that if the courts of *each* country with which a ship has contacts were to exploit every such contact to apply its own law "a *multiplicity* of conflicting and overlapping burdens would blight international carriage by sea." (Emphasis added.) 345 U.S. at 581. The law of the U.S. is not in itself a *multiplicity* of internationally conflicting and overlapping burdens; Respondent is contending that Petitioners are subject to U.S. law, and to U.S. law only, *wherever* their seamen are injured, and Petitioners have not shown that they are having some problem with courts in Saudi Arabia, Pakistan, India or in any other country with which they have contacts, trying to impose their laws

on them. Indeed it is not a proximate prospect that a court of any of those countries would apply their law to a civil dispute between a Greek seaman and a shipowner of Greek birth domiciled in the U.S. and operating out of the U.S. through two Panamanian corporations, but Respondent has no doubt that Petitioners would gladly submit to such application anyway if it meant lower monetary awards to their seamen. But it is not too much to expect, consistent with the principles of comity stressed by Petitioners, that the courts of other nations, including those of *Greece*, will respect the decision of this Court that Petitioners are subject to U.S. law.

Furthermore the distinction has been persuasively drawn between the retaliation-justifying interest of the flag nation in maintaining "discipline" and "internal order" aboard a vessel, on the one hand, and the right of a seaman to damages for negligence or unseaworthiness, on the other, in *Gerradin v. United Fruit Co.* (2 Cir. 1932) 60 F. 2d 927 at 929-930, cert. den. 287 U.S. 642, 77 L. Ed. 556; obviously, the Second Circuit appeared to indicate therein, "discipline" and "internal order" address themselves to such matters as mutinies and other criminal behavior aboard ship and have nothing to do with the applicability of civil statutes and jurisprudence to tort suits. But even if they do, Respondent submits that the application of such laws of the U.S. to this scrambled up transaction involving a shipowner of the U.S., of Greek birth, registering his vessels to two Panamanian corporations, "would not invade the [vessel's] internal economy * * * further than has already been done" (brackets added). *Kyriakos v. Goulandris* (2 Cir. 1945) 151 F. 2d 132 at 138.

Also not to be ignored is the fact that Petitioner Hellenic has voluntarily submitted itself to the laws of the U.S. and of a State of the U.S. on many occasions already. In *Lauritzen* it was said:

> "Because a law of the forum is applied to plaintiffs who voluntarily submit themselves to it is no argument for imposing the law of the forum upon those who do not." 345 U.S. at 591-592.

Obviously, it *is* an argument for imposing it on those who do.

Petitioners finally plead that they should not be punished by having the Jones Act applied to them just because their business requires that they have some contact with the U.S.; after all, they say, the U.S. is where the cargoes are because the U.S., owing to its prodigious wealth, is in an advantageous trade position in international commerce. But Petitioners have not demonstrated that cargoes are now, or were in 1945 when Callimanopoulos first came here, any more in the U.S. — as compared to being in Greece — than they had been from 1935 to 1938 when Callimanopoulos expanded from nothing to a fleet of eight ships as a *bona fide* Greek operator out of Greece, nor have they shown that the U.S. is or was any wealthier or in any more of an advantageous trade position — in comparison to Greece — at any one of these times more than at any other. Callimanopoulos is here for something more than U.S. cargoes; he is enjoying the protection of our form of government and law, which he obviously prefers to that of Greece; and Petitioners' comparison of him to Mr. J. Lauritzen, who has always resided in Denmark, is a fabulous conceit.

The United States is where the cargoes are; but it is also where the Jones Act is, at least for shipowners who come here for other things in addition to those cargoes, such as for the purpose of domiciling themselves under the protection of our system of government and law.

## CONCLUSION

The s/s HELLENIC HERO's Greek flag is not *bona fide* and the U.S. domicile of its owner is a heavy counterweight to it establishing a contact requiring the application of U.S. law to this suit. Neither the Greek birth of the shipowner, nor the Greek employment contract nor the gratuitous payment to this seaman of benefits, designated by the shipowner as being a partial payment under Greek law, can determine that Greek law is applicable. And the application of U.S. law hereto is not in conflict with principles of comity. Accordingly, Respondent submits that the decision of the Fifth Circuit below should be affirmed.

Respectfully submitted

JOSEPH B. STAHL
804 Baronne Building
305 Baronne Street
New Orleans, Louisiana
70112
Attorney for Respondent

ROSS DIAMOND, JR.
Van Antwerp Building
P. O. Box 432
Mobile, Alabama 36601
Of Counsel

## CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, April 1, 1970, I mailed copies of this Brief, U.S. Postage prepaid, properly addressed, to the following Counsel for all adverse parties and Amici Curiae herein:

George F. Wood, Esquire;
James M. Estabrook, Esquire;
John R. Sheneman, Esquire;
Abraham E. Freedman, Esquire; and
Arthur J. Mandell, Esquire.

New Orleans, Louisiana, this 1st day of April, 1970.

JOSEPH B. STAHL

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**APPENDIX A**

**DEPARTMENT OF STATE**

Washington, D.C. 20520

February 15, 1968

Mr. Arthur J. Mandell,
Mandell & Wright,
Seventh Floor South Coast Building,
Main at Rusk Street,
Houston, Texas.

Dear Mr. Mandell:

Replying to your letter of February 14, a check of the records in the Office of the Chief of Protocol failed to produce any evidence of Mr. Pericles Callimanopoulos now being or having been accredited to the United States in any capacity as a diplomatic officer of the Greek Government.

Sincerely yours,

Harold A. Pace

Harold A. Pace
Assistant Chief of Protocol

A2

APPENDIX B

UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA
NEW YORK, N. Y. 10017

YUkon 6-3434

April 1, 1968

Mr. Arthur J. Mandell
Mandell & Wright
Attorneys and Counselors
Seventh Floor South Coast Building
Main at Rusk Street
Houston, Texas 77002

Dear Mr. Mandell:

I am very sorry there has been such a long delay in responding to your inquiry concerning Mr. Pericles Callimanopoulos. We had to check several possible sources of information. Mr. Callimanopoulos does not appear to have any representative status or other connection with the Permanent Mission of Greece to the United Nations.

I trust this will answer your query.

Sincerely yours,

Bess N. Trinks

Bess N. Trinks
Privileges and Immunities
Officer

**APPENDIX C**

# HELLENIC LINES LIMITED

HEAD OFFICE: PIRAEUS - GREECE

U.S.A. OFFICES:
NEW YORK: 39 BROADWAY
NEW ORLEANS: 910 INTERNATIONAL TRADE MART

LONDON REPRESENTATIVES:
THE FENTON STEAMSHIP CO. LTD.
DEVIS MARKS HOUSE, DEVIS MARKS
LONDON E.C. 3 ENGLAND

AGENTS AT ALL PORTS IN THE WORLD

CABLES: "HELLENIC - PIRAEUS"
TELEX: THE NEW SEA CODE
PHONES: 4 7 1.6 6 1 FOUR LINES
DIRECTION: 4 7 6.8 0 8 - 4 7 1.6 6 7
TELEX: HE 2 1 2 & 1 0 1 HELLENIC - PIREA

RECEIVED
AUG 25 1965
CLAIMS LTD.

PIRAEUS: August 23, 1965
ANTI MIAOULI

Your Ref: PI-9071

Hellenic Lines Limited,
New York.

8617

Dear Sirs,

m.s."Hellenic Hero"
Zacharias Rhoditis, A.B.
August 3, 1965

We have before us your two letters concerning subject seaman dated August 16 and 19 with enclosure for both of which we thank you.

Rhoditis actually arrived in Athens on the 18th instant, was met by us at the Athens Airport, and then sent to the doctor as he was in need of some medical attendance. Dr. Katsafados who attended him and x-rayed his leg reported to us that Rhoditis beyond his fractured fibula has no other serious damage and as soon as the plaster is removed from his leg and the period of his convalescence is over he will be able bodied again with no disability at all.

We believe that Rhoditis will not deny to settle his account before the Court, as in the case of Constantinidss and some others on previous occasions we did, when we will, of course, offer him all the benefits to which he is entitled under the Greek Law and let you know in due course.

Very truly yours,
HELLENIC LINES LIMITED
Claims Department

Hellenic Lines Limited

S/S Taf 18ν

# ACCOUNT OF WAGES

Nº 32534

Name of Seaman: Ροδίτης Ζαχαρίας

Rating: Nautis.

| Date wages began, | Date Wages ceased, | Total period empl. |
|---|---|---|
| 24/7/65 | 3/8/65 | 13 μήνες. |

## EARNINGS

| | |
|---|---|
| Months ___ Days 13 @ 40.000 μην. | £ 17-06-8 |
| Υπερωρίαι 100 X 3/4 | £ 15-00 0 |
| Καθαριότης κοινών 1/2 | 2-00.0 |
| Total $ | £ 34-06.8 |

## DEDUCTIONS & ADVANCES

| | |
|---|---|
| Κράτησις μισθ | £ 1-16-10 |
| " υπερωριών | 0.01.9 |
| Συμβολή Ναυ | 0.16 6 |
| Καθαριότης κοινών 1/2 | 0-00.3 |
| Total Deductions | £ 2 15-4 |
| Final Balance | £ 31-11-4 |

APPENDIX D A4

The above account of earnings and deductions is correct.

Received in full settlement of all earnings and claims

the sum of £(31-11-4) αγγλικής λίρας ισοτιμία $ 88,38

At Νέα Υόρκη the 3/8/ 19

Master

Seaman

HELLENIC LINES LTD PIRAEUS

TD-000 SRG-0-00 ASD NY

**APPENDIX E**

# ΣΥΜΒΑΣΙΣ ΝΑΥΤΙΚΗΣ ΕΡΓΑΣΙΑΣ
## ΣΥΜΦΩΝΩΣ ΤΩ Κ.Ι.Ν.Δ. (ΑΡΘΡΟΝ 53 ΚΑΙ 54)

### 1. ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

α) Ὁ Πλοίαρχος ἢ ὁ νόμιμος ἀντιπρόσωπος τοῦ Πλοιάρχου ἢ τοῦ Ἰδιοκτήτου

τοῦ Α) Π. Μ) S, Π) Κ HELLENIC HERO

Νηολογίου ΠΕΙΡΑΙΩΣ χφ 7.068 Δ.Δ.Σ. S. V. G. M.

Πλοιοκτήτου Α.Ε. «ΕΛΛΗΝΙΚΗ»

Κατοίκου ἐδός: ΑΚΤΗ ΜΙΑΟΥΛΗ ἀριθ. 3

Διαχειριστοῦ σκαφοκαταστροίας (ἐφ' ὅσον ὑπάρχει)

Κατοίκου ἐδός ἀριθ.

καὶ β) Ὁ Ναυτικὸς ΡΟΔΙΤΗΣ-ΖΑΧΑΡΙΑΣ

γεννηθεὶς ἐν ΜΑΓΝΗΣΙΑ τὸ ἔτος 1927 Μ.Ε.Θ. 17449

συνεφώνησαν τὴν ἐπὶ τοῦ ἀνωτέρω σκάφους ναυτολόγησιν τοῦ δευτέρου συμβαλλομένου ὑπὸ τοὺς κάτωθι ὅρους:

Εἰδικότης ναυτολογήσεως ΝΑΥΤΗΣ

Μισθὸς καὶ ὅροι ἐργασίας τῆς Συλλογικῆς Συμβάσεως

Διάρκεια Συμβάσεως: Ἐν κυκλικῷ ταξιδίῳ ἀρχόμενον ἐξ ΕΛΛΑΔΟΣ καὶ λῆγον εἰς ΕΛΛΑΔΑ. ΑΔΙΑΚΡΙΤΩΣ λιμένων Φορτοεκφορτώσεως μετὰ προσέγγισιν εἰς λιμένας Η.Π.Α., ΙΝΔΙΩΝ ἢ καὶ ΠΕΡΣΙΚΟΥ ΚΟΛΠΟΥ.

### 2. ΕΙΔΙΚΟΙ ΟΡΟΙ

α)

β)

### ΕΦΑΡΜΟΣΤΕΟΣ ΝΟΜΟΣ ΚΑΙ ΔΙΚΑΙΟΔΟΣΙΑ

3) Ἡ παροῦσα σύμβασις θὰ διέπηται ἀποκλειστικῶς καὶ μόνον ὑπὸ τῶν Ἑλληνικῶν Νόμων καὶ τῶν Ἑλληνικῶν Συλλογικῶν Συμβάσεων.

Συμφωνεῖται περαιτέρω, ὅτι οἱαδήποτε ἀπαίτησις ἢ διαφορὰ ἀπορρέουσα ἐκ τῆς παρούσης ναυτολογήσεως ἢ συμβάσεως ἢ ἐρειδομένη ὁπωσδήποτε ἀμέσως ἢ ἐμμέσως ἐπὶ τῆς παρούσης συμβάσεως ἢ ἐρειδομένη ἀμέσως ἢ ἐμμέσως ἐφ' οἱασδήποτε ἐργασίας ἢ ἄρα σχολήσεως παρασχεθείσης ἐπὶ τοῦ πλοίου παρὰ τοῦ ναυτικοῦ θὰ κρίνεται καὶ ἐκδικάζεται ἀποκλειστικῶς καὶ μόνον παρὰ τῶν Ἑλληνικῶν Δικαστηρίων.

4) Τὸ ἀτμόπλοιον εὑρίσκεται εἰς ΗΡΑΚΛΕΙΟΝ

Ἐ[illegible] τῇ 11ΟΛ. 1985 196

ΤΑ ΣΥΜΒΑΛΛΟΜΕΝΑ ΜΕΡΗ

Ὁ Πλοίαρχος Ὁ Ναυτολογούμενος

Η ΑΙΜΕΝΙΚΗ ΑΡΧΗ

Παρατήρησις:
Ἡ παροῦσα σύμβασις χρονολογεῖται καὶ ὑπογράφεται παρὰ τῶν συμβαλλομένων καὶ τῆς σχετικῆς Ἀρχῆς.

Βεβαιοῦται ἡ ἔγγισις γραμμάτων ἐκ μέρους τοῦ ναυτολογουμένου.

Η ΑΙΜΕΝΙΚΗ ΑΡΧΗ ΠΕΙΡΑΙΩΣ

## APPENDIX F

## RESPONDENT'S TRANSLATION OF PERTINENT PARTS OF EMPLOYMENT CONTRACT

1. *CONTRACTING PARTIES*

a) The Master or the legal representative of the Master or Vessel Owner
of the S/S, M/S, or M/V HELLENIC HERO
of the Vessel Owner "HELLENIC LINES" LTD.

* * *

APPLICABLE LAW AND JURISDICTION

This *contract* shall be governed solely and exclusively by the Laws of Greece and the Greek Collective Agreements.

It is further agreed that any claim or dispute flowing from this *maritime hiring engagement or contract,* or howsoever based directly or indirectly *on this contract,* or based directly or indirectly *on any labor or job classification served* on the vessel by the seaman, shall be adjudged and adjudicated solely and exclusively by the Courts of Greece. (Emphasis supplied.)